

## CCRB INVESTIGATIVE RECOMMENDATION

|   |                                     |                           |  |                                    |                                 |
|---|-------------------------------------|---------------------------|--|------------------------------------|---------------------------------|
| Investigator:<br>Karina Herrera                   | Team:<br>Squad #2                   | CCRB Case #:<br>201706078 | <input type="checkbox"/> Force                         | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S.   |
|   |                                     |                           | <input checked="" type="checkbox"/> Abuse              | <input type="checkbox"/> O.L.      | <input type="checkbox"/> Injury |
| Incident Date(s)<br>Thursday, 07/20/2017 8:30 AM  | Location of Incident:<br>§ 87(2)(b) | Precinct:<br>34           | 18 Mo. SOL<br>1/20/2019                                | EO SOL<br>1/20/2019                |                                 |
| Date/Time CV Reported<br>Thu, 07/20/2017 11:22 AM | CV Reported At:<br>IAB              | How CV Reported:<br>Phone | Date/Time Received at CCRB<br>Wed, 07/26/2017 11:10 AM |                                    |                                 |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
|                    |      |              |
|                    |      |              |
|                    |      |              |

| Witness(es) | Home Address |
|-------------|--------------|
|             |              |
|             |              |
|             |              |
|             |              |

| Subject Officer(s)       | Shield | TaxID  | Command |
|--------------------------|--------|--------|---------|
| 1. DT3 Christopher Healy | 4546   | 946490 | WARRSEC |
| 2. DT1 Francisco Pena    | 03923  | 910291 | WARRSEC |
| 3. DT3 Corey Gresko      | 1660   | 932745 | WARRSEC |

| Witness Officer(s)        | Shield No | Tax No | Cmd Name |
|---------------------------|-----------|--------|----------|
| 1. DT3 Christian Martinez | 7412      | 944774 | WARRSEC  |
| 2. SGT Damion Brown       | 03928     | 945533 | WARRSEC  |

| Officer(s)              | Allegation   | Investigator Recommendation |
|-------------------------|--|-----------------------------|
| A.DT3 Christopher Healy | Abuse: Detective Christopher Healy entered § 87(2)(b) in Manhattan.                          |                             |
| B.DT3 Corey Gresko      | Abuse: Detective Corey Gresko entered § 87(2)(b) in Manhattan.                               |                             |
| C.DT1 Francisco Pena    | Abuse: Detective Francisco Pena entered § 87(2)(b) in Manhattan.                             |                             |
| D.DT1 Francisco Pena    | Abuse: Detective Francisco Pena threatened to notify Administration for Children's Services. |                             |
| E.DT1 Francisco Pena    | Abuse: Detective Francisco Pena refused to provide his name to § 87(2)(b)                    |                             |
| F.DT3 Christopher Healy | Abuse: Detective Christopher Healy searched § 87(2)(b) in Manhattan.                         |                             |

### Case Summary

On July 20, 2017, the IAB Command Center called an individual, who wished to remain anonymous, who filed the following complaint as a reporting non-witness of the incident. The original log # § 87(2)(b) was forwarded to the Chief of Department and the following was referred to the CCRB via log # § 87(2)(b).

At approximately 8:30 a.m. on July 20, 2017, § 87(2)(b) returned to her apartment, which was located at § 87(2)(b) in Manhattan, from dropping off her son at school. § 87(2)(b) lived in the four-bedroom apartment with § 87(2)(b) the owner of the apartment, § 87(2)(b) her boyfriend, § 87(2)(b) her other roommate, and her three children, including her minor daughters § 87(2)(b) and § 87(2)(b) friend, § 87(2)(b) was visiting from Florida at the time. Although § 87(2)(b) and § 87(2)(b) were in a romantic relationship, they each had their own room within the apartment; therefore, § 87(2)(b) lived with her children in her bedroom while § 87(2)(b) lived by himself in the living room.

Upon entering the apartment, § 87(2)(b) saw four plainclothes officers, Detective Christopher Healy, Detective Christian Martinez, Detective Corey Gresko, and Detective Francisco Pena of the Warrant Squad, with § 87(2)(b) who was in handcuffs (**Allegation A: Abuse of Authority,** § 87(2)(g) (**Allegation B: Abuse of Authority,** § 87(2)(g) (**Allegation C: Abuse of Authority,** § 87(2)(g) § 87(2)(b) asked the detectives what had happened. Detective Pena exited § 87(2)(b)'s room and spoke with § 87(2)(b) in Spanish. § 87(2)(b) asked Detective Pena if the detectives had an order to enter the home. Detective Pena allegedly responded, "Do you want me to call ACS?" (**Allegation D: Abuse of Authority,** § 87(2)(g) § 87(2)(b) asked Detective Pena twice for his name and he allegedly refused to provide it both times (**Allegation E: Abuse of Authority,** § 87(2)(g) § 87(2)(b).

At approximately 9:43 a.m., two unidentified uniformed officers briefly responded to a 911 call about the incident location (Board Review 01). Detective Pena later asked § 87(2)(b) why she called the police. § 87(2)(b) told Detective Pena she did not call the police. Detective Pena told § 87(2)(b) that he was going to call ACS once he verified who called 911 (**within Allegation D: Abuse of Authority,** § 87(2)(g) To § 87(2)(b) knowledge, no call was placed to ACS by officers in regards to this incident.

Once a search warrant was obtained by Detective Healy, § 87(2)(b)'s room was searched (**Allegation F: Abuse of Authority,** § 87(2)(g) § 87(2)(b). The officers were inside of the apartment until approximately 7:30 p.m. The officers did not search anywhere beyond § 87(2)(b)'s room.

§ 87(2)(b) was the only individual arrested inside of the apartment. He was charged with § 87(2)(b) (Board Review 02). No video footage was found regarding this incident.

### **Findings and Recommendations**

**Allegation (A) Abuse of Authority: Detective Christopher Healy entered** § 87(2)(b)  
**in Manhattan.**

**Allegation (B) Abuse of Authority: Detective Corey Gresko entered** § 87(2)(b)  
**in Manhattan.**

**Allegation (C) Abuse of Authority: Detective Francisco Pena entered** § 87(2)(b)  
**in Manhattan.**

§ 87(2)(b) was interviewed at the CCRB on October 17, 2017. § 87(2)(b) was interviewed via the telephone on October 25, 2017 (Board Review 03). § 87(2)(b) was spoken to over the telephone on October 26, 2017 (Board Review 04).

Detective Healy was interviewed on December 21, 2017. Sergeant Damion Brown of the Warrant Squad was interviewed on December 28, 2017. Detective Martinez was interviewed on January 9, 2018. Detective Pena was interviewed on January 18, 2018. Detective Gresko was interviewed on January 30, 2018.

The general contours of the incident are not in dispute. At approximately 8:00 a.m. on the incident date, Detective Healy, Detective Gresko, and Detective Pena entered § 87(2)(b) in Manhattan while Detective Martinez remained outside of the building. The detectives arrested § 87(2)(b) on the basis of an I-Card (Board Review 05). § 87(2)(b) was awake when the officers entered the apartment, but § 87(2)(b) and § 87(2)(b) were sleeping. § 87(2)(b) had taken her son to school and returned to the apartment after the officers had already entered. The officers remained in the apartment until they obtained a search warrant, at which time they conducted a search of the living room, which was also § 87(2)(b)'s bedroom (Board Review 06).

§ 87(2)(g)

Although § 87(2)(b) was not home at the time that the officers entered, and did not know how they entered, she believed they simply walked through the front door because she left it unlocked when she took her son to school. § 87(2)(b) later spoke to § 87(2)(b) whom she described as being mentally disabled, and he told her that he did not open the door for the officers. § 87(2)(b) believed that § 87(2)(b) and § 87(2)(b) did not open the door for the officers because they were all still asleep when she returned to the apartment. § 87(2)(b) told § 87(2)(b) that he did not hear when the officers entered the apartment because he was sleeping.

§ 87(2)(b) stated that § 87(2)(b) woke up her and § 87(2)(b) and told them that there were officers inside of the apartment. This was when § 87(2)(b) first realized that there were officers present; therefore, she did not witness when the officers initially entered the apartment.

§ 87(2)(b) was contacted several times in order to provide a statement in regards to what occurred (Board Review 04). However, every time § 87(2)(b) answered his phone, he was unable to provide coherent responses to the basic questions posed to him. When asked questions about the incident, § 87(2)(b)'s responses consisted of several unrelated responses about his hobby as a chef and offering to make food for the investigator. The undersigned investigator informed § 87(2)(b) about the CCRB and attempted to schedule an interview with him, but § 87(2)(b) did not seem to comprehend the information shared with him. Based on these telephone conversations, § 87(2)(b) was unable to provide any articulated answers to the investigation. On November 30, 2017, CCRB investigators went to the incident location in an attempt to speak to § 87(2)(b) in person, but he was not present when they arrived.

The CCRB was unable to obtain statements from § 87(2)(b) and § 87(2)(b) because their attorneys advised them to not cooperate. The CCRB was unable to obtain contact information for § 87(2)(b) or her parents.

Detective Healy, Detective Gresko, and Detective Pena provided consistent accounts of the initial entry. All of them stated that upon arriving, Detective Healy knocked on the front door and § 87(2)(b) opened. At the time, Detective Healy had an I-Card with probable cause to arrest § 87(2)(b) (Board Review 05), who was wanted for a gun-point robbery of a motorcycle (Board Review 07). Detective Healy stated that he greeted § 87(2)(b) and identified himself as part of the police department. Detective Healy showed § 87(2)(b) a picture of § 87(2)(b) and asked if he recognized him. § 87(2)(b) told Detective Healy that he knew the gentleman in the photograph and he confirmed that § 87(2)(b) lived in that apartment. Detective Healy told § 87(2)(b) that he needed to speak to § 87(2)(b). § 87(2)(b) replied, "Ok. He's right back there," and stepped out of the way. § 87(2)(b) waved his arm in a circling motion towards § 87(2)(b)'s bedroom and the detectives entered the apartment. Once inside the apartment, the officers observed the stolen motorcycle and guns in plainview in the room that § 87(2)(b) had directed them to and in which § 87(2)(b) was sleeping.

Detective Pena stated that immediately after § 87(2)(b) saw the photograph, he pointed to a room in the back of the apartment and said that § 87(2)(b) was over there. Detective Gresko stated that he was standing by the building's staircase outside of the apartment and saw § 87(2)(b) make a hand motion, but he did not know where the motion was directed to.

After arresting § 87(2)(b) Detective Healy approached § 87(2)(b) and spoke with him. § 87(2)(b) provided his name and told Detective Healy that his name was on the lease of the apartment and that he rented out the additional rooms to other individuals. Detective Healy stated that he did not experience any difficulties in communicating with § 87(2)(b). § 87(2)(b) seemed emotionally fine and his mental state was apparently normal. Detective Healy did not mention to anyone the possibility of § 87(2)(b) being a mentally disabled individual and he did not believe any of the other detectives mentioned that possibility either.

Detective Martinez, who had remained outside while the other three officers had entered the building, received a radio transmission from one of the detectives who had entered the apartment and was instructed to come upstairs. Upon entering the apartment, Detective Martinez greeted

§ 87(2)(b) but he did not speak to him again while he was there. § 87(2)(b) did not appear emotionally disturbed or mentally disabled to Detective Martinez.

Sergeant Brown received a call from Detective Healy, who informed him that he had arrested § 87(2)(b) at the incident location on the basis of an I-Card (Board Review 05) and that § 87(2)(b) was found to be in possession of a firearm and a stolen motorcycle. Sergeant Brown responded to the incident location and § 87(2)(b) opened the door for him. § 87(2)(b) appeared physically healthy and emotionally fine. Sergeant Brown eventually approached § 87(2)(b) and asked him to confirm what had happened. § 87(2)(b) told Sergeant Brown that he had opened the door for the detectives and allowed them inside. § 87(2)(b) did not appear to Sergeant Brown to be emotionally disturbed or mentally disabled in any way.

Neither Detective Gresko nor Detective Pena spoke with § 87(2)(b) but they did not perceive § 87(2)(b) as emotionally disturbed or mentally disabled in any way.

“Consent to search is voluntary when it is a true act of the will, an unequivocal product of an essentially free and unconstrained choice ... No one circumstance is determinative of the voluntariness of consent. Whether consent has been voluntarily given or is only a yielding to overbearing official pressure must be determined from the circumstances.” People v. Gonzalez, 39 N.Y.2d 122 (1976) (Board Review 08).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (D) Abuse of Authority: Detective Francisco Pena threatened to notify Administration for Children’s Services.**

§ 87(2)(b) stated that when she saw the detectives inside of § 87(2)(b)'s room, Detective Pena exited the room and did not allow her to enter. § 87(2)(b) spoke to Detective Pena in Spanish and asked if the officers had an order to enter the home. Detective Pena replied, "Do you want me to call ACS?" Throughout their conversation, Detective Pena threatened to call ACS approximately three to four times. Later, two officers arrived to the incident location in regards to a 911 call that they had received (Board Review 01). Detective Pena asked § 87(2)(b) why she called 911. § 87(2)(b) told Detective Pena that she did not call 911. § 87(2)(b) had not called 911, but had called § 87(2)(b)'s sister, whom she believed had called 911 to file a complaint). Detective Pena told § 87(2)(b) that he was going to verify who called 911 and again threatened to call ACS.

When § 87(2)(b) woke up and opened her bedroom door, she saw Detective Pena speaking to § 87(2)(b). § 87(2)(b) did not hear the details of their conversation, but she heard Detective Pena speaking Spanish. § 87(2)(b) eventually left the apartment to pick up her laundry. When § 87(2)(b) left the apartment, she saw three uniformed officers arriving to the incident location and she overheard that it was in regards to a 911 call that they had received. § 87(2)(b) left and did not hear the rest of the conversation. When § 87(2)(b) returned from the laundromat, she again saw Detective Pena speaking to § 87(2)(b). As § 87(2)(b) passed by them, she heard Detective Pena tell § 87(2)(b) that if he found out that it was her who called 911, he would call ACS.

As per EVENT # § 87(2)(b) at 9:34 a.m. an unidentified female called 911 and reported that officers were searching § 87(2)(b) and § 87(2)(b) and were refusing to provide their names (Board Review 01). The caller stated that she herself was not in the apartment. At 9:47 a.m., Sector 34D responded and reported that it was officers from the Warrant Squad who were at the location.

Detective Pena stated that while he was inside of § 87(2)(b)'s room, he saw § 87(2)(b) and § 87(2)(b) exit out of another bedroom. § 87(2)(b) and § 87(2)(b) did not speak to Detective Pena and immediately returned to the bedroom that they had come out of. At some point after seeing § 87(2)(b) and § 87(2)(b) Detective Pena saw § 87(2)(b) arrive to the apartment. § 87(2)(b) passed by § 87(2)(b)'s bedroom and entered the bedroom that § 87(2)(b) and § 87(2)(b) were in. Detective Pena overheard a conversation occurring inside of the bedroom, but he did not know what was said. Detective Pena denied ever speaking to § 87(2)(b) at any point during this incident.

When Sergeant Brown arrived to the incident location, he was informed by Detective Healy that § 87(2)(b) and § 87(2)(b) were inside of the apartment in another bedroom. At some point while Sergeant Brown was present, he overheard Detective Pena speaking to § 87(2)(b) in Spanish. Sergeant Brown does not know Spanish so he did not understand what they said to one another. Detective Pena told Sergeant Brown that § 87(2)(b) wanted an item from § 87(2)(b)'s bedroom, but Detective Pena told her that she could not enter. Sergeant Brown did not speak to § 87(2)(b) at any point.

Detective Martinez stated that while he was inside of § 87(2)(b)'s bedroom, he saw § 87(2)(b) pacing back and forth in front of the door. Detective Pena was by the doorway and Detective Martinez observed him speak with § 87(2)(b) in Spanish, though he did not know what was said. Detective Martinez did not speak to § 87(2)(b) at any point.

Detective Healy, Detective Martinez, Detective Pena, Sergeant Brown, and Detective Gresko did not know anything about an officer mentioning ACS to § 87(2)(b) and they denied ever mentioning ACS to anyone. All of the officers did not believe the general conditions of the apartment were hazardous to children, but they attributed any safety concerns they had specifically to § 87(2)(b)'s room because of the guns and contraband that was found inside.

§ 87(2)(g)

According to Patrol Guide Procedure 215-03, upon making a reasonable determination that imminent danger to a child's life or health exists, uniformed members of service must notify Administration of Children's Services (ACS) (Board Review 09).

§ 87(2)(g)

**Allegation (E) Abuse of Authority: Detective Francisco Pena refused to provide his name to**

§ 87(2)(b)

As discussed above, § 87(2)(b) stated that she had multiple conversations with Detective Pena while the officers were inside of the apartment. After Detective Pena threatened § 87(2)(b) with ACS, § 87(2)(b) asked him twice for his name and Detective Pena refused to provide it.

As discussed, § 87(2)(b) heard § 87(2)(b) having multiple conversations in Spanish with Detective Pena.

As discussed, § 87(2)(b) called § 87(2)(b)'s sister and told her about what was occurring and an individual, possibly § 87(2)(b)'s sister, called 911 and reported that officers were inside the apartment and refused to provide their name(s) (Board Review 01).

Detective Pena stated that he did not converse with § 87(2)(b) at any point and he did not hear her request his or any other officers' names.

Detective Healy, Detective Martinez, Sergeant Brown, and Detective Gresko did not know if any of the tenants inside of the apartment requested any of the officers' information. Sergeant Brown, Detective Martinez, and § 87(2)(b) stated that they observed Detective Pena speaking with § 87(2)(b) while they were inside of the apartment, though they did not know what was said in the conversation.

Patrol Guide Procedure 203-09 states that officers must courteously and clearly state their names, ranks, shield numbers, and commands to anyone who requests that information from them (Board Review 10).

§ 87(2)(g)  
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**Allegation (F) Abuse of Authority: Detective Christopher Healy searched § 87(2)(b) in Manhattan.**

It is undisputed that, to the best knowledge of the interviewed civilians, the officers did not search § 87(2)(b)'s bedroom, beyond what they observed in plainview, prior to obtaining a search warrant, and did not search any other parts of the apartment.

As the officers remained in § 87(2)(b)'s bedroom, § 87(2)(b) asked § 87(2)(b) to translate in Spanish what the officers were saying in English. § 87(2)(b) told § 87(2)(b) that one of the officers said they were in the apartment waiting for a search warrant.

When § 87(2)(b) exited her bedroom to do laundry, she saw officers inside of § 87(2)(b)'s bedroom. § 87(2)(b) overheard the officers say that they were waiting for an



order so they could “touch” items. Approximately two hours later, more officers arrived to the apartment and that was when the officers began “touching” the items.

When Detective Healy arrested § 87(2)(b) he was instructed by a lieutenant to obtain a search warrant from the courthouse. Detective Healy explained to the Assistant District Attorneys what he and the other detectives had found inside of the apartment and the allegations that were made against § 87(2)(b). A search warrant was issued to Detective Healy for the apartment because of the firearms and the stolen motorcycle that were observed in plainview (Board Review 06). Detective Healy left the courthouse, returned to the incident location, conducted a search of § 87(2)(b)'s bedroom, and found alleged cocaine (Board Review 11).

Search Warrant § 87(2)(b) was issued by § 87(2)(b) (Board Review 06). Detective Healy appeared before the court and stated that there was reasonable cause to believe that certain property at the incident location was used in the commission of a crime (specifically, § 87(2)(b)). § 87(2)(g)

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#### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint in which § 87(2)(b) and § 87(2)(b) have been a party respectively (Board Review 12) (Board Review 13).
- This is the first CCRB case involving the phone number provided by the reporting non-witness of the incident (Board Review 14).
- Detective Healy has been a member of service for ten years and has been a subject in two CCRB complaints and five allegations, none of which were substantiated. § 87(2)(g)
- Detective Pena has been a member of service for thirty years and has been a subject in eleven CCRB complaints and fifteen allegations, of which four were substantiated:
  - 9802591 involved substantiated allegations of Force (other) and person searched against Detective Pena. The Board recommended charges and he was found Not Guilty.
  - 201410337 involved a substantiated allegation of premises entered and/or searched against Detective Pena. The Board recommended charges and the NYPD imposed a forfeiture of five vacation days.
  - 201507343 involved a substantiated allegation of premises entered and/or searched against Detective Pena. The Board recommended Command Discipline B and the NYPD imposed formalized training.
  - Detective Pena's CCRB history involves four allegations of premises entered and/or searched, two of which were substantiated, one was withdrawn, and the other remains open, and one allegation of refusal to provide name and shield number, which was unsubstantiated.

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**CCRB Case # 201706078**

- Detective Gresko has been a member of service for fourteen years and has been a subject in nine CCRB complaints and nineteen allegations, of which two were substantiated:
  - 201507343 involved a substantiated allegation of premises entered and/or searched against Detective Gresko. The Board recommended Command Discipline B and the NYPD imposed formalized training.
  - 201608013 involved a substantiated allegation of Discourtesy (word) against Detective Gresko. The Board recommended Command Discipline A and the NYPD has not yet imposed discipline.
  - Detective Gresko's CCRB history involves six premises entered and/or searched allegations, two of which were unsubstantiated, one of which was exonerated, one which was substantiated, one which was withdrawn, and another which remains open.

#### **Mediation, Civil and Criminal Histories**

- This case was not suitable for mediation.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- According to the New York City's Comptroller's Office, a Notice of Claim regarding this incident has not been filed as of April 13, 2018 (Board Review 18).

Squad No.:     \_\_\_\_\_2\_\_\_\_\_

|               |           |                    |       |
|---------------|-----------|--------------------|-------|
| Investigator: | _____     | _____              | _____ |
|               | Signature | Print Title & Name | Date  |

|               |           |                    |       |
|---------------|-----------|--------------------|-------|
| Squad Leader: | _____     | _____              | _____ |
|               | Signature | Print Title & Name | Date  |

|           |           |                    |       |
|-----------|-----------|--------------------|-------|
| Reviewer: | _____     | _____              | _____ |
|           | Signature | Print Title & Name | Date  |